

¹ *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, CC Docket 96-45, Public Notice, 18 FCC Rcd 1941 (2003) ("Public Notice").

DISCUSSION

I. METHODOLOGY FOR CALCULATING SUPPORT IN COMPETITIVE STUDY AREAS

A. **Contrary to ILEC Claims, CETCs Are Subject to Their Own Costly Regulatory Mandates and Thus Do Not Receive a Relative Competitive Advantage.**

Several ILECs complain that they cannot compete on equal footing against CETCs because regulatory mandates imposed on ILECs result in higher costs. For example, CenturyTel, Inc. asserts that “CETCs receive a competitive advantage when they receive identical funding as the ILEC, but are subject to significantly lighter regulatory and service obligations.”² Similarly, the Montana Telecommunications Association states that ILECs must comply with several requirements “which either are not imposed or are waived or modified for other carriers seeking ETC designation. . . . [W]ireline ETCs are required to comply with Local Number Portability [LNP] requirements and E-911 regulations. Incumbent LECs are subject to rules as carriers of last resort, which do not apply to competitive ETCs.”³

As an initial matter, it is important to separate out regulatory obligations imposed on ILECs as a result of their ETC status from those imposed as a result of their dominant carrier status. In fact, most ILEC obligations are rooted in their historic status as sanctioned monopoly providers, not in their receipt of USF support. It would be non-sensical to impose dominant-carrier regulation on wireless carriers simply because they seek to compete on equal footing with the former wireline monopolists. By the same token, if at some point in the future the ILECs can persuade Federal and state regulators that they are no longer dominant carriers in their

² Comments of CenturyTel, Inc. (“CenturyTel”) at 38-39.

³ Comments of Mont. Telecomm. Ass’n at 5; *see also* Comments of GVNW Consulting, Inc. at 9.

marketplace, the proper approach, consistent with the Act, would be to “regulate down” to parity. Until that time, imposing dominant carrier regulation on wireless CETCs can serve no other goal than to protect the ILECs – to the detriment of the rural consumers on whom the Act is focused.

Further, contrary to the claims of these ILECs, wireless CETCs must comply with a whole host of costly regulatory mandates – *including* LNP and E-911, as part of the FCC’s overall regulation of commercial mobile radio service providers. In fact, in the current year, wireless carriers may well spend more to implement these mandates than their wireline counterparts, which implemented these mandates many years ago, and have had sufficient time to recover the costs of implementation. For example, according to CTIA estimates, LNP will cost \$1 billion to implement and \$500 million yearly to maintain.⁴ Further, unlike wireline carriers, wireless carriers are required to deploy technologically complex and extremely expensive E911 location technology. Some rural wireless carriers estimate that the implementation of a network-based solution can cost about \$30,000-\$40,000 per cell site.⁵ In addition, several states have imposed Carrier of Last Resort Obligations as part of the ETC designation process.⁶ Thus, ILEC claims that CETCs receive a windfall from being compensated based on ILEC costs are without merit.

If anything, rural ILECs receiving a guaranteed rate of return have a competitive advantage over wireless carriers, which must face the risks inherent in a competitive marketplace. In fact, several of these rural ILECs have even exceeded the authorized 11.25%

⁴ Communications Daily, Jan. 24, 2003, at 5. Sprint PCS, for example, estimates that its costs for installing LNP will exceed \$86 million. *Verizon Wireless’ Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation*, WT Docket No. 01-184, *Memorandum Opinion and Order*, 17 FCC Rcd 14,972 n.106 (2002).

⁵ Sue Marek, *Creating Rural E911 Solutions*, *Wireless Week*, June 3, 2002, at 38.

⁶ See e.g., *Final Order Approving GCC License Corporation As An Eligible Telecommunications Carrier*, Corp. Comm’n of the State of Okla., Cause No. PUD 980000470, at 17 (rel. Apr. 11, 2001).

rate of return – in some instances receiving greater than a 25% rate of return.⁷ Furthermore, unlike *any* potential CETC, rural ILECs already have been receiving universal support for years. In the meantime, wireless carriers have been operating in the competitive wireless marketplace, and thus have had to decrease their costs and profit margins while continually improving service quality in order to compete against each other and these well-funded ILECs.

B. Dobson and Other Wireless Service Providers Provide a High Degree of Service Quality, as Reflected by Consumer Behavior and Choices.

Several ILECs assert that CETCs offer an inferior quality of service. The Montana Universal Service Task Force (“MUST”), for example, states that “given the inherent unreliability of wireless services in rural areas (e.g., poor geographic coverage, large numbers of dropped or blocked calls due to lack of channel capacity, etc.), such providers would likely not be considered true competitors by some customers.”⁸ MUST further argues that wireless carriers receive a windfall “because their costs of providing inferior service are generally below those of the incumbent wireline carrier (you get what you pay for).”⁹ Some ILECs urge the Joint Board to recommend the adoption of service quality standards as a threshold requirement for receiving USF support.¹⁰

The rural ILECs’ arguments are belied, however, by a recent survey conducted by the United States General Accounting Office. This survey revealed that nearly 83 percent of mobile phone users were satisfied with their service, and about 47 percent of adult mobile phone users

⁷ See AT&T Corp. Notice of *Ex Parte* Presentation, CC Docket Nos. 00-256, 96-45, and 98-166, filed May 9, 2003. AT&T’s filing notes that several CenturyTel subsidiaries have exceeded the authorized rate of return.

⁸ Comments of MUST at 22-23.

⁹ *Id.* at 29.

¹⁰ See Comments of Washington Indep. Tel. Ass’n at 18-20, Comments of Neb. Rural Indep. Tel. Cos. (“Nebraska Rural”) at 28.

believed their call quality was improving.¹¹ Moreover, these ILECs fail to acknowledge that competition provides consumers with options for choosing between service providers, enabling these consumers to make their decisions based on whatever criteria they value most, including quality and cost of service. Simply put, if wireless service provided by CETCs was inferior, it would fail.

In this regard, it is difficult to argue with the marketplace success of wireless services. As depicted in the comments filed by the Nebraska Rural Independent Telephone Companies, most line growth over the past several years has been wireless.¹² The Yankee Group reports that “the growing reliance on wireless phones has already displaced 25 percent of U.S. landline phone minutes – a number that is expected to rise to 35 percent by 2004.”¹³ Thus, the American consumer does not view wireless service as inferior, and the ILECs’ positions that CETCs receive windfalls or require imposition of service quality standards are baseless.

II. SCOPE OF SUPPORT

¹¹ United States General Accounting Office, Telecommunications - FCC Should Include Call Quality in Its Annual Report on Competition in Mobile Phone Services (Apr. 2003), at 3.

¹² Comments of Nebraska Rural at 3 (citing to FCC’s Local Competition Report and 7th Annual Report on CMRS Competition).

¹³ *Leap Continues to Lead National Trend of “Cord Cutters,”* PR Newswire, May 12, 2003. Other studies demonstrate that some customers have chosen wireless as a complete replacement for wireline connection. For example, a study in southern Idaho identified 406 disconnecting wireline subscribers who affirmatively listed the reason for disconnection from wireline service as wireless substitution. Comments of Western Wireless Corp., Att. B at 4. Furthermore, even where wireless customers are retaining their wireline phone, many customers consider their wireless phone as their primary phone. *Id.* at 6 (citing a Leap Wireless study that 80 percent of its subscribers claimed that they use their Leap wireless phone as their primary phone.) *See also id.*, Att. C at 2 (“Numerous studies show that consumers are increasingly relying on mobile phones as their primary phones, and that significant percentages of consumers would consider eliminating their wireline service entirely.”). The preference for wireless phones in rural areas is particularly apparent among 18 to 20 year olds. A study by the National Telecommunications Cooperative Association and the Foundation for Rural Service found that 78 percent of the 18-20 year old respondents said they owned their own wireless phones, well above the national average of 30-40 percent. Brian Hammond, *Survey Finds Wider Wireless Use Among Young in Rural Areas*, TR Daily, June 2, 2003.

A. The Record Demonstrates that USF Support Should Not Be Limited to Primary Lines.

In its initial comments, Dobson requested that the Joint Board ensure that its recommendations are consistent with competitive neutrality.¹⁴ After reviewing the other comments in this proceeding it is clear that rural ILECs and CETCs agree on one thing: the scope of USF support must not be limited to primary lines. Of the 28 commenters who addressed the issue, only five supported primary line restrictions.¹⁵ The majority of commenters agree that primary line restrictions would be administratively difficult to implement, inconsistent with the Communications Act of 1934, and would reduce infrastructure investment.¹⁶ Dobson does not oppose the majority view, so long as it is imposed on a competitively neutral basis.

III. PROCESS FOR DESIGNATING ETCs

A. Allegations of CETC Cherry-picking Are Unfounded.

A number of rural ILECs accuse CETCs of “cherry-picking” by serving the relatively low-cost areas and most profitable customers in an ILEC’s study area.¹⁷ According to these ILECs, proof of this alleged behavior is the fact that CETC service areas are not identical to ILEC study areas.¹⁸ CenturyTel asserts that CETCs should be required to serve “the entirety of

¹⁴ Comments of Dobson at 13.

¹⁵ See Comments of AT&T Corp. at 4-16, General Communication, Inc. at 67-69, National Ass’n of State Utility Consumer Advocates at 4-7, SBC Communications, Inc. at 11-12, Verizon at 4-7.

¹⁶ See, e.g., Comments of Idaho Tel. Ass’n at 9, MUST at 36, Western Wireless Corp. at 18.

¹⁷ See, e.g., Comments of CenturyTel at 26.

¹⁸ See, e.g., Comments of Moultrie Indep. Tel. Co. at 6-7.

the rural ILEC's study area . . . and any requests to deviate from this standard [should be] critically analyze[d].”¹⁹

Although it is true that CETCs sometimes do not serve the entirety of a given ILEC's study area, this result has nothing to do with cherry-picking. Rather, CETC service areas differ from ILEC study areas because of the different service areas authorized by the FCC for wireless licensees. For example, Cellular Radiotelephone Service providers operating in rural areas are typically licensed according to Rural Service Areas (“RSAs”), and PCS carriers are licensed according to Major Trading Areas (“MTAs”) and Basic Trading Areas (“BTAs”) — these wireless service areas are based on easily determined geo-political boundaries. Accordingly, Cellular and PCS service areas are substantially different from ILEC study areas.²⁰ Wireless carriers cannot thus be required to serve any portion of an ILEC study area that is beyond their licensed service areas. Simply stated, a wireless CETC applicant cannot be expected to serve a portion of an ILEC study area for which it is not licensed. Dobson is not aware of any wireless CETCs seeking ETC designation for any area less than the entirety of the area which they are authorized by the FCC to serve. Thus, contrary to ILEC allegations, there is no evidence that CETCs are engaged in cherry-picking.

The ILECs' position in this instance is reflective of a key problem in this proceeding: the ILECs' insistence that the universal service program be structured from a backward-looking,

¹⁹ Comments of CenturyTel at 26; *see also* Comments of MUST at 37 (“We read the Telecommunications Act as requiring that a wireless applicant for ETC designation must provide service throughout a rural telephone company's study area as one requirement for designation.”).

²⁰ In fact, it is extremely burdensome for a potential wireless CETC to have to map out ILEC study areas in order to match them to their licensed service areas. In order to determine the extent to which it might qualify for funding, a wireless carrier must match its markets or serving areas with the complex web of boundaries of ILEC study areas, wire centers, UNE zones, and rural disaggregation areas. *See* Comments of Dobson in WT Docket No. 02-381, Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services (submitted Feb. 3, 2003), at 16.

ILEC-centric perspective.²¹ The changes adopted by the Telecommunications Act of 1996, however, require the Commission to implement the program from a *consumer*-centric perspective, driven by competitive forces. Adopting ILEC proposals requiring service to entire study areas thus has the potential to significantly impair, if not completely bar, the provision of competitive universal service, particularly by wireless CETCs – without any countervailing benefit to rural consumers. Such a policy would be far more effective in protecting the ILECs' monopoly position than it would be in ensuring comparable service for rural consumers.

B. Any Additional Certification Requirements Must Apply Equally to ILECs and CETCs.

Dobson does not object to the suggestion that CETCs be required to certify that all Federal high-cost support received is used for the provision, maintenance, and upgrading of facilities, as specified in Section 254.²² Under the principle of competitive neutrality, however, any universal service requirements must apply equally to ILECs and CETCs. Thus, if CETCs are required to make any additional certifications, ILECs must be required to make the same certifications.

CONCLUSION

As a result of the CETC provisions contained in the Telecommunications Act of 1996, consumers in high-cost areas have the potential to reap the primary benefits of competition: better services at lower prices. Rural ILECs used the initial round of comments in this proceeding to undermine this potential for competition by making unfounded allegations regarding CETC cherry-picking, service quality, and costs. Dobson urges the Joint Board to see

²¹ See Comments of Dobson at 6 (regulators should view universal service issues from the consumer's perspective rather than from the ILEC's perspective).

²² See, e.g., Comments of Nebraska Rural at 29.

through these allegations and take a fresh look at the structure of the universal service program to ensure that its policies allow the competitive market to function to the benefit of rural consumers.

Respectfully submitted,

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